

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7993 of 2003

with

SPECIAL CIVIL APPLICATIONS No 8328, 8330,

8331 & 8332 All of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DINESH J DHANESHA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Applications
MR JJ YAJNIK for Petitioners
MR A D OZA GOVERNMENT PLEADER &
MR K P RAVAL AGP for Respondent No. 1-3
MR LR PUJARI for Respondent No. 4

Date of decision: 19/07/2004

ORAL JUDGEMENT

1.0 The petitioners herein have challenged the order dated 09/05/03 passed by the respondent State Government at Annexure 'A' to the petition, whereby their services were terminated on the ground that they had not cleared the Gujarat Public Service Commission's (for short, "the G.P.S.C.") Exam for the posts of Medical Officer, Class II.

2.0 The petitioners were originally appointed on ad hoc basis pursuant to the examination conducted by the Directorate of Medical Science, E.S.I and were appointed as Medical Officer, Class II. It was made clear in the said appointment order that ultimately the petitioners will have to clear the G.P.S.C. exams for the said posts.

3.0 Now, since the petitioners have not cleared the said examination conducted by the G.P.S.C., Mr.K P Raval learned AGP for the respondent authorities and Mr.J J Yagnik learned advocate for the petitioners have fairly considered the Division Bench judgment of this Court in the case of K.D.Vodhra & ors. v. Kamleshbhai Gobarbhai Patel & ors. reported in 2003 (1) G.L.H. 312, wherein the same issue was dealt with. It was held therein that ad hoc appointments, irrespective of their tenure, continue to be so and must make way for candidates selected in accordance with the Recruitment Rules and that a direction to the Government to regularize ad hoc appointees would amount to asking the Government to violate statutory rules and such an approach would be a mockery of the legal system.

3.1 In Dr.Chanchal Goyal v. State of Rajasthan reported in (2003) 3 SCC 485 it has been held that unless the initial recruitment is regularized through a prescribed agency, there is no scope for a demand for regularization. Only a legally selected candidate can replace the ad hoc or temporary appointee.

4.0 Therefore, the petitioners have restricted their claim only for the limited purpose that until the regular appointees appointed through the G.P.S.C. join, the petitioners may not be relived in view of the fact that they are working since 1986 and some of them may have already crossed the upper age limit of service.

5.0 Mr.Yagnik for the petitioners has submitted that the Court may direct the State Government to consider the case of the petitioners only for the limited purpose of continuity of the petitioners in service till the regularly selected candidates appointed through the G.P.S.C. join.

6.0 After hearing the learned advocates for the parties, I am of the opinion that prima facie the request made by Mr.Yagnik is reasonable. The State Government should accept the said request in view of the fact that the petitioners are working since 1986 and that some of them may have already crossed the upper age limit of service. Moreover, most of them may have also appeared in the last G.P.S.C. examination conducted for the said posts.

7.0 Keeping in mind the fact that the petitioners are working in the public dispensary / hospital since more than 15 years and they being highly experienced, their services would be valuable. Therefore, as a special case, it is directed that the petitioners be continued in service, till the regularly selected candidates appointed through the G.P.S.C. are available. The services of the petitioners shall be continued but without any order for regularization. Rule is made absolute to the aforesaid extent with no orders as to costs.

(K. S. Jhaveri, J.)

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